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In the

# Supreme Court of the United States

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**October Term, 1949**

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**No. 129, Misc.**

**ALLEN T. REID**

**Petitioner,**

**vs.**

**THE STATE OF NORTH CAROLINA**

**Respondent.**

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## Brief of the State of North Carolina, Respondent, Opposing Petition for Writ of Certiorari.

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## STATEMENT OF THE CASE

The Petitioner, Allen T. Reid, seeks, by writ of *certiorari*, to have the Supreme Court of the United States review a decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Wilson County, imposing a sentence of death upon Petitioner, based upon a conviction of burglary in the first degree under the laws and statutes of North Carolina. The opinion of the Supreme Court of North Carolina was filed on June 16th, 1949, and is reported as:

*State v. Allen T. Reid*, 230 N. C. 561; 53 S.E. (2d) 849.

## FACTS

On September 1st, 1948, Mrs. James Barnes lived in an apartment in a house located at 204 Park Avenue, Wilson, North Carolina. (R. 19) She was then twenty-seven years of age, weighed 128 pounds, and was a teacher in a high school in Wilson. (R. 22) Her husband was in Washington, D. C., and she was alone. She came in on the early morning of September 2nd and retired, there being one window to the bedroom. While sleeping, she was awakened by someone placing a hand on her shoulder. (R. 20) She got off on the opposite side of the bed, and a person seized both of her wrists and told her not to scream. (R. 21) She was able to free her right wrist, and the intruder told her to get back on the bed, stating also that he wanted to commit an act of sexual perversion. (R. 21) He also made certain statements as to what would happen if she screamed as set forth on R. 21. She screamed, calling Mrs. Sarah Mayo, who lived in another apartment, when the intruder began to twist her left wrist. (R. 21) The intruder then jumped out of the window head first. (R. 21) The intruder was a male person, but she did not know him, and she was not acquainted with the Petitioner. (R. 22) A lady living next door heard the scream, heard a car start. (R. 23) This happened in the nighttime, and there was no light reflected into the room from the outside. (R. 24)

The police investigated at once and found the screen outside the window had been cut from top to bottom with a sharp instrument; two razor blades were found underneath the window on the outside. (R. 25) Paper wrappings for razor blades were also found at the same place, and the blades and wrappings were stamped with the trade name of "Treet". (R. 26, 44, 50, 59) About four blocks from Mrs. Barnes' apartment, a '35 or '36 Model Chevrolet was found on the railroad track, which apparently had been hit by a train. A "Treet" blade wrapper was found on the floor-board of the front seat. (R. 26, 27) This car belonged

to Pinkney Reid, father of the Petitioner, and the Petitioner, Allen Reid, had been driving it for about a year and left his father's home with the car the night of September 1st. (R. 57, 58) This car was found on the railroad track the same night Mrs. Barnes' apartment was entered. (R. 26, 27) A "Treet" razor blade, sealed in a wrapper, was found in a trunk in a room where Petitioner and his wife lived. (R. 46, 53) The Petitioner's father testified that Petitioner stayed in and had a trunk in this room. (R. 58) A fingerprint was found on the bottom section of the window. (R. 28) This fingerprint was found to be a fingerprint of the Petitioner, Allen Reid, and the Identification Officer of the Wilson Police Department, and two identification officers of the State Bureau of Investigation testified to this effect. (R. 27, 34, 39) Two of these men had received F.B.I. instruction. The Petitioner was apprehended at Norfolk, Virginia, and when arrested in a hotel room stated he was registered in the name of "Johnnie Stewart," but that his name was Robert Terry. (R. 57) A billfold containing a driver's license and other identification cards was found between the mattress and the springs of Petitioner's bed; these cards and license were in the name of "Allen Reid". (R. 57) Petitioner stated that a friend of his left this billfold there. (R. 57) When the police officers from Wilson saw Petitioner in the Norfolk jail, he admitted his name was Allen Reid. (R. 48, 51) The Petitioner stated that on the night in question, he borrowed the car from his father, went to a tobacco warehouse and there got with two colored men who wanted to ride around; that these men caused him to wreck the car, held him up, robbed him and carried him to Norfolk, Virginia, where they guarded him, would not let him leave, and threatened him with death if he told anything. (R. 48, 52) He claimed he did not know these colored men. (R. 48) When he was returned to Wilson, he denied driving the car. (R. 49, 53)

The Petitioner did not testify in the case and offered no evidence.

## ARGUMENT

### I.

PETITIONER HAS NOT SHOWN INTENTIONAL, ARBITRARY AND SYSTEMATIC EXCLUSION OF ELIGIBLE PERSONS OF PETITIONER'S RACE FROM JURY SERVICE.

It is not denied that under the Fourteenth Amendment, the eligible citizens of Petitioner's race are entitled to their chance to serve on the various juries and cannot be deprived of this chance by design. But fairness in selection does not require a guaranteed, proportional representation of the Petitioner's race on every jury selected and constituted.

> *Akins v. Texas,* 325 U.S. 398, 89 L. ed. 1692;
> *Thomas v. Texas,* 212 U.S. 278, 53 L. ed. 512;
> *Virginia v. Rives,* 100 U.S. 313, 25 L. ed. 667;
> *Swain v. State,* 215 Ind. 259, 18 N.E. (2d) 921, 926;
> *Zimmerman v. State,* ..... Md. ....., 59 A. (2d) 675;
> *Certiorari denied,* 93 L. ed. (Ad. Op. No. 7) 425;
> *16 C.J.S.* (Constitutional Law), Sec. 540.

The type of discrimination condemned is said to be "purposeful discrimination" (AKINS v. TEXAS, 325 U.S. 398, 89 L. ed. 1692), or a "long-continued, unvarying, and wholesale exclusion of Negroes from jury service" (NORRIS v. ALABAMA, 294 U.S. 587, 79 L. ed. 1074). There is a presumption that officers in charge of jury selection have performed their duty fairly and justly (TARRANCE v. FLORIDA, 188 U.S. 519, 47 L. ed. 572, 116 So. 470 (Fla.), Certiorari denied in 278 U.S. 599, 73 L. ed. 525) and without discrimination against race or class. The burden of proof is upon Petitioner to show an alleged discrimination in the selection of a grand or petit jury (AKINS v. TEXAS,

325 U.S. 398, 89 L. ed. 1692; MURRAY v. LOUISIANA, 163 U.S. 101, 41 L. ed. 87).

The Petitioner does not attack the terms or the provisions of the statutes of North Carolina as to jury selection and service (Petitioner's Brief, p. 3), but he does claim an unconstitutional discrimination resulting from administration.

The Petitioner challenged the array of petit jurors and special veniremen and moved to set aside the whole list (R. 7, 8, 9), but Petitioner did not challenge the Bill of Indictment because of the constitution of the grand jury. A member of his race did serve on that jury. (R. 17) We now examine the evidence on the motion to quash the panels.

*K. J. Herring, Clerk of the Board of Commissioners of Wilson County,* (R. 10):

This witness had been Clerk to the Board of Commissioners since 1943. He produced the minute book containing the names of persons drawn for jury duty in Wilson County since he had been Clerk. He testified (R. 10) that there was no way to tell from the records or from the slips in the jury box whether a person was white or colored, unless you happened to know the individuals. He had no way of knowing the number of colored persons serving on prior juries, and the number of forty was drawn for each Court. He testified that jurors were selected on a basis of character and intelligence, and there was no discrimination because of race or color. (R. 11)

*Mrs. Sadie H. Collins, Register of Deeds since December 4, 1944* (R. 11):

This witness produced minute books Nos. 13 and 14. Book 14 covered the period from November 2, 1942 to February 22, 1943. She testified (R. 12) that the books did not show whether a juror was white or colored; that you could not tell unless you had personal acquaintance, and she did not know anything like a majority. All of the

minute books of the County Commissioners in the office of Register of Deeds were tendered to counsel for Petitioner for investigation as to discrimination. (R. 12)

*Reverend I. B. Butler, a minister of Wilson County* (R. 12):

This witness had lived in Wilson County since 1921. He testified that he had visited the Courts frequently and that he didn't believe he had ever seen a Negro serve on a petit jury in Wilson County. He did not have personal knowledge of any Negroes who had been called for jury duty. He estimated that the colored population was 40% of the total. On cross-examination, this witness testified that he attended the last term of Superior Court and thought it was in September. He could not remember when he was in Court at any time prior to the September Term. He did not know the number of persons, either white or colored, that had been excused for sickness or other reasons. (R. 13)

*James A. Armstrong, a member of the Negro race* (R. 13):

This witness owned property and paid taxes, and had lived in the County all of his life, or forty-seven years. He did not know of his personal knowledge that any Negro had been called for service on the petit jury. He was summoned as a venireman in the Allen Reid case (Petitioner's case).

*Charles C. Lamm, Clerk of Wilson County Superior Court since December, 1942* (R. 14):

This witness testified that he received the names of persons summoned for jury duty. That for this Term, forty regular jurors were drawn, and none were colored; that sixty-five veniremen were drawn, and he happened to know one that was colored. He did not have knowledge of all the veniremen. There was nothing on the list to indicate whether jurors were white or colored. He was present when

the special venire was drawn, and no name was laid aside because of race or color.

*J. W. Thompson, Sheriff of Wilson County for two years* (R. 15):

This witness testified as follows:

> "I am the Sheriff of Wilson County, have been for two years. I have before me a list of persons drawn for jury duty at this term of court. I supervised the summoning of those persons for jury duty. I have personal knowledge of the number of Negroes on this list. No Negroes are on the list of regular jurors drawn. There are three Negroes on the list of special veniremen, that I know of. There names are James A. Armstrong, Henry Shaw, Paul Hargrove, Kelly Strickland, Johnnie Williamson. I believe there is another that I don't recall just offhand. From this list, I know the townships these men live in; some of them I know personally. I have been Sheriff for the past two years. I don't know the exact number of Negroes who have been drawn for regular jury duty for the past two years, but I do know there have been some drawn for regular jury duty; I just couldn't say how many. I would say, roughly, that the population of Wilson County is 50,000. I would say that the Negroes comprise between 35% and 40% of that total."

On cross-examination, this witness testified that he was in the Commissioners' room when the panel of jurors was drawn, and none were laid aside because of race or color, and the same was true as to the special venire since he was present when it was drawn. There was nothing on the scrolls to indicate the color of persons, but the township is indicated on the slip.

This evidence falls far short of making out a *prima facie* case which the State would be called upon to rebut. It merely shows:

(a) That the minute books and slips or scrolls showing names of jurors contain nothing showing the race of the

juror.

(b) That a colored juror served on the grand jury that found the Bill of Indictment.

(c) That when the names of the regular panel and special veniremen were drawn, none were laid aside because of race or color.

(d) That there were some five or six colored persons or Negroes drawn for the special venire.

(e) That no Negroes appeared on the regular panel.

(f) The witness, James A. Armstrong, forty-seven years of age, property owner and tax payer, had not served as a juror, and had no personal knowledge of other Negroes serving, but it appears that he was serving as a Negro venireman in this case.

(g) The witness Butler had no personal knowledge of Negroes serving on the jury, but his knowledge only extended to the prior term of Court in September, and he did not know as to the Negroes excused.

(h) The Sheriff establishes that Negroes have been drawn for jury duty for the past two years in Wilson County, but he did not know how many.

(i) That Negroes constitute 35% to 40% of the total population of the County.

The Petitioner has failed to show that long-continued exclusion; that purposeful, intentional, arbitrary exclusion of any representative of a large group of the Negro race which warrants the inference or *prima facie* case requiring proof in rebuttal on the part of the State. In NORRIS v. ALABAMA, 294 U.S. 587, 79 L. ed. 1074, no Negro had served on the grand jury or petit jury within the memory of many witnesses who had lived in the County all of their lives. A member of the Commission which made up the jury roll testified that he had "never known of a single instance where any Negro sat on any grand or petit jury in the entire history of that County." It was shown that there were many eligible persons of the Negro race competent for jury duty.

In NEAL v. DELAWARE, 103 U.S. 370, 26 L. ed. 567, it was shown that out of a colored population which exceeded 20,000 in 1870 and in 1880 exceeded 26,000, no colored citizen had been summoned as a juror in the Courts of the State.

In HILL v. TEXAS, 316 U.S. 400, 86 L. ed. 1559, it appeared that there were many eligible Negro jurors but that no Negro had been on the grand jury list for sixteen years. The Assistant District Attorney testified that he had never known of a Negro being called to serve on a grand jury of Dallas County.

In PIERRE v. LOUISIANA, 306 U.S. 354, 83 L. ed. 757, from 1896 until 1936, no Negro had served on grand or petit jury in the Parish. One-half the population of the Parish was colored, and there were many Negroes eligible for jury duty.

In PATTON v. MISSISSIPPI, 332 U.S. 463, 92 L. ed. 76, there were many Negroes qualified to serve as jurors in the County. It was shown by many witnesses that no Negro had served on the grand or petit juries for thirty years.

Many other cases could be commented upon, but the above are sufficient to show that we do not have in this case the conditions that caused this Court to say that the State had not met the presumption of race exclusion. In this case, Petitioner has not shown any large group of Negroes that are eligible for jury duty as shown in the NORRIS case, *supra*, and other cases. Petitioner has not shown over what period of time such race exclusion has existed, if it does exist. Petitioner asserts in his brief that the trial Court refused to let his counsel go into the drawing of prior juries. This argument is not well founded. On R. 10, 11, it will appear that the Court did sustain an objection of the State as to *how many* jurors were drawn for a prior term, but it appeared at all times that the records and scrolls did not show the races; it also appears that the question was answered on R. 11 that a venire of forty was drawn for each term of Court and that the witness had no personal

knowledge as to the number of each race. Again to show that such argument is not correct: On R. 12, the Court placed at the disposal of Petitioner's counsel all minute books in the office of Register of Deeds pertaining to all juries; and (R. 15) Sheriff Thompson testified as to jury composition on races for the two years he had been in office.

It is recognized that on a question of this nature, the Court will make an independent investigation, nevertheless, great weight is accorded the decisions of State Courts who make the initial decisions and have a better opportunity to investigate the facts.

*Thomas v. Texas,* 212 U.S. 278, 53 L. ed. 512;
*Akins v. Texas,* 325 U.S. 398, 89 L. ed. 1692.

We submit, therefore, that Petitioner has not made out a case of jury exclusion because of race.

## II.

## THE DECISION OF THE SUPREME COURT OF NORTH CAROLINA THAT THERE WAS NO FATAL VARIANCE BETWEEN THE ALLEGATIONS OF THE INDICTMENT AND THE EVIDENCE, PRESENTS NO FEDERAL QUESTION.

The Petitioner attempts to raise a constitutional question under the Sixth Amendment to the Constitution of the United States because the trial Court and the Supreme Court of North Carolina held that there was not a fatal variance between the allegations in the bill of indictment and the evidence produced at the trial. It is said that the indictment charges that the Petitioner feloniously broke and entered the dwelling house of Mrs. James Barnes in the nighttime with the intent to commit the felony of rape, whereas the proof or evidence in the case shows that the Petitioner intended to commit a crime of sexual perversion,

which, under the laws of North Carolina, is a distinct and separate felony from that of rape.

We do not understand the Petitioner claims that the bill of indictment within itself is defective. The indictment does conform to the laws of the State of North Carolina.

*State v. Allen,* 186 N. C. 302, 119 S.E. 504;
*State v. Staton,* 133 N. C. 642, 45 S.E. 362;
*State v. Ellsworth,* 130 N. C. 690, 41 S.E. 548;
*State v. Christmas,* 101 N. C. 749, 8 S.E. 361.

The North Carolina practice in criminal trials permits a defendant in a criminal case to interpose a demurrer to the evidence or make a motion for judgment as of nonsuit. The statute is as follows:

> § 15-173. *Demurrer to the evidence.*—When on the trial of any criminal action in the superior court, or in any criminal court, the state has produced its evidence and rested its case, the defendant may move to dismiss the action or for judgment of nonsuit. If the motion is allowed, judgment shall be entered accordingly; and such judgment shall have the force and effect of a verdict of 'not guilty' as to such defendant. If the motion is refused, the defendant may except; and if the defendant introduces no evidence, the case shall be submitted to the jury as in other cases, and the defendant shall have the benefit of his exception on appeal to the supreme court.
>
> "Nothing in this section shall prevent the defendant from introducing evidence after his motion for nonsuit has been overruled; and he may again move for judgment of nonsuit after all of the evidence in the case is concluded. If the motion is then refused, upon consideration of all of the evidence, the defendant may except; and, after the jury has rendered its verdict, he he shall have the benefit of such latter exception on appeal to the supreme court. If defendant's motion for judgment of nonsuit be granted, or be sustained on

appeal to the supreme court, it shall in all cases have the force and effect of a verdict of 'not guilty'."

This motion raises the question as to whether or not there is sufficient evidence to submit the case to the jury, and likewise, a defendant can raise the question as to whether or not there is a fatal variance between the indictment and the proof.

*State v. Franklin,* 204 N. C. 157, 158, 167 S.E. 569;
*State v. Martin,* 199 N. C. 636, 155 S.E. 447;
*State v. Grace,* 196 N. C. 280, 281, 145 S.E. 399;
*State v. Harris,* 195 N. C. 306, 141 S.E. 883;
*State v. Harbert,* 185 N. C. 760, 118 S.E. 6;
*State v. Gibson,* 170 N. C. 697, 86 S.E. 774.

It was certainly a question for the North Carolina Court to decide as to whether or not the bill of indictment was sufficient, and upon this phase, there is no question presented for decision by this Court.

*Caldwell v. Texas,* 137 U.S. 692, 34 L. ed. 816;
*Bergemann v. Backer,* 157 U.S. 655, 39 L. ed. 845;
*Kohl v. Lehlback,* 160 U.S. 292, 40 L. ed. 432.

It was the contention of the State on this record that although the Petitioner expressed the wish to commit an unnatural act with the prosecuting witness, nevertheless, this was not inconsistent with the theory that the final act that he intended to commit was the felony of rape. It was a question, therefore, for the North Carolina Courts to decide if the evidence was sufficient to be submitted to the jury that the Petitioner intended to commit the felony of rape, and it was decided that there was sufficient evidence to submit to the jury. This was in accordance with North Carolina practice.

*State v. Allen,* 186 N. C. 302, 119 S.E. 504;
*State v. Boone,* 35 N. C. 244.

On a motion of this nature, according to the practice in North Carolina, the evidence is construed in the light most favorable to the State.

*State v. Gentry,* 228 N. C. 643, 46 S.E. (2d) 863;
*State v. Hough,* 227 N. C. 596, 42 S.E. (2d) 659.

When a state court judicially determines that there is sufficient evidence of a fact to be submitted to a jury, its decision is not reviewable by the United States Supreme Court on writ of *certiorari.*

*Noble v. Mitchell,* 164 U.S. 367, 41 L. ed. 472;
*American Railway Exp. Co. v. Kentucky,* 273 U.S. 269, 71 L. ed. 639;
*Bell Telephone Co. v. Pennsylvania Public Utility Commission,* 309 U.S. 30, 84 L. ed. 563.

In BELL TELEPHONE CO. v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, 309 U.S. 30, 32, 84 L. ed. 563, it is stated in a *per curiam* opinion:

> "As to the first contention, it appears that the state court heard the appeal judicially and decided that there was evidence justifying the finding of the Commission of unreasonable discrimination in the transaction of its intrastate business. In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs. The contention that such a decision is erroneous does not present a federal question."

The following paragraph from the opinion of Justice White in NOBLE v. MITCHELL, 164 U.S. 367, 373, 41 L. ed. 472 would seem to be decisive of the question:

> "It is suggested that there is no adequate proof that the policy in controversy was issued by a foreign corporation. This involves a mere question of fact, which was submitted to the jury by the trial court, and as to which the Supreme Court of Alabama said there was evidence sufficient for the consideration of the jury, and which is not subject to review here on writ of error. DOWER v. RICHARDS, 151 U.S. 659 (38:306); RE BUCHANAN, 158 U.S. 31 (39:884)."

If it should be determined that the Supreme Court of North Carolina erroneously decided the case, no question would be presented for determination by this Court for it has long been held that where a party is fully heard in the regular course of judicial proceedings, an erroneous decision of the state court is not a denial of due process within the Fourteenth Amendment of the Constitution of the United States.

*Bonner v. Gorman,* 213 U.S. 86, 53 L. ed. 709;
*American Railway Express Co. v. Kentucky,* 273 U.S. 269, 71 L. ed. 639;
*West Ohio Gas Co. v. Public Utilities Commission,* 294 U.S. 63, 79 L. ed. 761.

In AMERICAN RAILWAY EXPRESS CO. v. KENTUCKY, 273 U.S. 269, 71 L. ed. 639, it is said, at page 273:

> "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law."

The Supreme Court of North Carolina, therefore, had the right to pass upon the sufficiency of the evidence and to

decide what cases, based upon the various aspects of the evidence, do or do not fall within the purview of the crime of burglary as charged in the bill of indictment, and this applies equally to any of the constituent parts required to be alleged in the bill of indictment.

*Buchalter v. New York,* 319 U.S. 427, 87 L. ed. 1492;
*Howard v. Fleming,* 191 U.S. 126, 48 L. ed. 121;
*Howard v. Kentucky,* 200 U.S. 164, 50 L. ed. 421;
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*Snyder v. Massachusetts,* 291 U.S. 97, 78 L. ed. 674;
*Chaplinsky v. New Hampshire,* 315 U.S. 568, 574, 86 L. ed. 1031, 1036;
*Moore v. Missouri,* 159 U.S. 673, 40 L. ed. 301.

The trial Court charged the jury (R.82) that if the jury found that the Petitioner's criminal intent was to commit the crime against nature and not the intent to commit rape, that the Petitioner would not be guilty of the crime charged in the bill of indictment.

It is the contention of North Carolina, therefore, that this point was settled by the general local law of procedure and furnishes no ground for review or interposition by this Court and that there is no Federal question involved on this point.

On this point again, North Carolina further contends that this Court is without jurisdiction to review this question because the Petitioner failed to set up this question in the State Courts as a question arising under the Constitution of the United States. An examination of the record will show that the Petitioner did take exception to the overruling of the motion for judgment as of nonsuit, but that the Petitioner argued the point as a question of State practice, and his brief filed in the Supreme Court of North Carolina will so show. While Petitioner did state in his brief that the defendant in a criminal trial was entitled to

know, as a matter of due process of law, the crime with which he is charged and to have it alleged in the indictment with particularity, when the Petitioner came to discuss the question, his argument is entirely on the point that there was a fatal variance between the evidence and the allegations in the indictment, and the Petitioner cited State cases on State practice to support his position. The Supreme Court of North Carolina certainly did not understand that it was passing on a constitutional question in this respect as a reading of the opinion in this case will disclose (STATE v. REID, 230 N. C. 561, 53 S.E. (2d) 849).

Under the statute authorizing review by *certiorari* of decisions of the highest courts of the several states, jurisdiction of the United States Supreme Court to review decisions alleged to involve rights, privileges, or immunities under the Constitution is limited to cases in which the rights, privileges, or immunities are "specially set up or claimed."

28 U.S.C. 1940 ed., Sec. 344

The rights, privileges, or immunities must be set up in the State courts.

*Brooks v. Missouri,* 124 U.S. 394, 31 L. ed. 454;
*Hartford Life Ins. Co. v. Johnson,* 249 U.S. 490, 63 L. ed. 722.

## CONCLUSION

The State of North Carolina, therefore, contends that the Petitioner has not brought himself within the rulings of this Court which allow his case to be considered upon *certiorari* on the question of jury discrimination and that the second question raised by him is not substantial and not of sufficient importance to warrant consideration by the United States Supreme Court. This second question or point

was not set up in the State Courts as a question or point arising under the Constitution of the United States. Therefore, this application for writ of *certiorari* should be denied.

Respectfully submitted,

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Counsel for the State of
North Carolina, Respondent.

# APPENDIX

*Chapter 9, General Statutes of North Carolina—Jury*

§ 9-1. The board of county commissioners for the several counties, at their regular meetings on the first Monday in June in the year 1947, or the jury commissions or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, at the times of their regular meetings, and every two years thereafter, shall cause their clerks to lay before them the tax returns for the preceding year for their county, and a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age, from which lists the board of county commissioners or such jury commissions shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of grand and petit juries. A list of the names thus selected by the board of county commissioners or such jury commissions shall be made out by the clerk of the board of county commissioners or such jury commissions and shall constitute the jury list of the county and shall be preserved as such.

The clerk of the board of county commissioners or such jury commissions, in making out the list of names to be laid before the board of county commissioners or such jury commissions, may secure said lists from such sources of information as deemed reliable which will provide the names of persons of the county above twenty-one years of age residing within the county qualified for jury duty. There shall be excluded from said lists all those persons who have been convicted of any crime involving moral turpitude or who have been adjudged to be non compos mentis.

§ 9-2. *Names on list put in box.*—The commissioners at their regular meeting on the first Monday in July in the

year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

§ 9-3. *Manner of drawing panel for term from box.*—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

§ 9-6. *Jurors having suits pending.*—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

§ 9-7. *Disqualified persons drawn.*—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

§ 9-8. *How drawing to continue.*—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

§ 9-29. *Special venire to sheriff in capital cases.*—When a judge of the superior court deems it necessary to a fair and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be a special writ of venire facias, commanding him to summon such number of persons qualified to act as jurors in said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when it is returnable, with the names of the jurors summoned.

§ 9-30. *Drawn from jury box in court by judge's order.*—When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into open court forthwith the jury boxes of the county, and

he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall, after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken.